

**FILED**

**MAR 14 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VICTORINO AGUIRRE-CRUZ, aka  
Jorge Hernandez-Gonzalez,

Defendant-Appellant.

No. 05-50750

D.C. No. CR-04-03167-NAJ

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Napoleon A. Jones, District Judge, Presiding

Submitted March 8, 2006<sup>\*\*</sup>

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges.

Victorino Aguirre-Cruz appeals his 78-month sentence imposed following his guilty plea to being found in the United States after illegal re-entry, in

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 18 U.S.C. § 3742, and we affirm.

Aguirre-Cruz contends that the district court violated his Sixth Amendment rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 & n.16 (9th Cir. 2005), *petition for cert. filed*, No. 05-8847 (filed Jan. 23, 2006); *United States v. Moreno-Hernandez*, 419 F.3d 906, 914 & n.8 (9th Cir.), *cert. denied*, 126 S. Ct. 636 (2005); *United States v. Von Brown*, 417 F.3d 1077, 1078-79 (9th Cir.) (per curiam), *remanded*, 2005 WL 2129648 (9th Cir. Sept. 6, 2005) (unpublished order).

We also reject Aguirre-Cruz's contention that the enhanced sentence was inappropriate because the government did not allege, nor did Aguirre-Cruz admit, the date of his deportation. *See United States v. Castillo-Rivera*, 244 F.3d 1020, 1024-25 (9th Cir. 2001) (holding temporal relationship not required); *see also United States v. Hernandez-Hernandez*, 431 F.3d 1212, 1216-17 (9th Cir. 2005) (rejecting Sixth Amendment challenge where indictment did not specify that deportation was subsequent to the predicate conviction).

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**AFFIRMED.**